

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff

DECISION and ORDER

-VS-

13-CR-6025

TINA MCDONALD

Defendant

This case was referred by text order of the undersigned, entered February 12, 2013 to Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B), ECF No. 34. On September 30, 2013, Defendant filed an omnibus motion, ECF No. 192, seeking *inter alia* suppression of statements, both oral and written, and suppression of tangible evidence. As to the former, she alleged that as to the latter, she maintained that the search of her residence at 59 Ernst Street on July 1, 2012, pursuant to a warrant, was unlawful based upon a lack of probable cause in the application of submitted in support of the warrant. On December 9, 2013, ECF No. 247, and January 23, 2014, ECF No. 275, an evidentiary hearing was held concerning the circumstances surrounding Defendant's warrantless arrest on July 10, 2012 and statements she made following her arrest. On November 10, 2015, Magistrate Judge Payson filed a Report and Recommendation ("R&R"), ECF No. 450, recommending that Defendant's application to suppress statements and her application to suppress tangible evidence both be denied. On December 22, 2015, Defendant timely filed objections to the R&R, ECF No. 465, arguing that "her arrest on July 10, 2012 during the search of her residence was without sufficient probable cause and

therefore the subsequent statement of McDonald in police custody must be suppressed as fruit of an unlawful arrest.” Objections to Magistrate Judge’s Report and Recommendation, p.1.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the R&R to which objections have been made. Upon a *de novo* review of the R&R, including a review the transcript, ECF No. 340, of the evidentiary hearing held on December 9, 2013 and January 23, 2014 and exhibits received, the Court accepts the proposed findings and recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Payson’s R&R, ECF No. 450, Defendant’s application to suppress statements and her application to suppress tangible evidence, ECF No. 192, are both denied.

IT IS SO ORDERED.

Dated: Rochester, New York
January 26, 2016

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge